BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

IN THE MATTER OF THE PETITION OF GREAT PLAINS COMMUNICATIONS, INC. FOR ARBITRATION TO RESOLVE ISSUES RELATING TO AN INTERCONNECTION AGREEMENT WITH WWC LICENSE L.L.C.	**)**	**APPLICATION NO. C-2872**

COMMENTS OF THE RURAL INDEPENDENT COMPANIES

The Rural Independent Companies (the "Companies") identified below appreciate the opportunity to comment and to express their concerns regarding the Arbitrator's decision entered in Application No. C-2872 on July 1, 2003.

The Companies are very disturbed about the negotiation and arbitration process between rural ILECs and wireless carriers; a process that places significant time and financial burdens upon the Companies. As a result, the Companies will be forced to decide between allowing traffic to terminate on their networks without just compensation, ultimately requiring their end-users to pay for such traffic, or to continue to attempt to respond to a process in which a wireless carrier will drown the Companies with a hundred or more discovery requests to overwhelm the Companies' resources.

With regard to Application No. C-2872, the Companies desire to address issues that the Companies believe constitute errors in the Arbitrator's decision. Although the Companies believe the Arbitrator has erred in his resolution of most issues presented for his decision, the Companies will focus on the three aspects of the decision that are most egregious (Issues 8, 7, and 3) and will summarize errors made with respect to Issues 1 and 2.

Issue 8 relates to Western Wireless' demand for separate rating and routing points. Western Wireless later rephrased this issue and called it "Tandem-Routed Local

Calling." Western Wireless demanded and the Arbitrator ruled that Great Plains must route and carry toll calls to the tandem switch, but must treat the calls as if originated and terminated within the same exchange. In making such a ruling, the Arbitrator redefined "telephone exchange service" and "telephone toll service" contrary to definitions found in Telecommunications Act of 1996 (the "Act"). The Arbitrator's decision completely ignores ILECs' equal access requirement by insisting a toll call be treated as "virtually local," and forces ILECs to become interexchange carriers. The decision will also require Great Plains and all Nebraska ILECs to disregard the end-user's preferred interexchange carrier designation regarding long distance calls to Western Wireless' subscribers.

By ignoring technical limitations of the existing network, the Arbitrator has effectively required Great Plains to build and provision a separate, parallel Feature Group C network in this State. The cost to provision this second network will be immense and the Arbitrator's decision provides no cost recovery mechanism. Ultimately, this cost must be recovered from the end-user through higher monthly charges, although some subscribers may not make calls to Western Wireless' subscribers.

Finally, this exact issue is before the FCC in CC-Docket No. 01-92. On May 9, 2002, Sprint Corporation, on behalf of its wireless division, filed a petition with the FCC. In its petition, Sprint sought a ruling from the FCC on whether ILECs must provide a carrier with separate rating and routing points. In light of this pending FCC Docket, imposing a requirement on Great Plains to incur the cost of provisioning the Feature Group C network as announced in the Arbitrator's decision would be premature.

Issue 7 dealt with the method by which Great Plains should deliver land to mobile traffic to Western Wireless. According to Western Wireless, Great Plains must route calls to Western Wireless at the tandem when Western Wireless does not have direct facilities into Great Plains' exchanges. Issue 7 is the same as Issue 8 as it relates to "tandem routed local calling". Thus, Western Wireless has presented "tandem routed local calling" as two separate issues. Due to this common underlying factor (tandem routed local calling), it is essential that both issues 7 and 8 be overturned with respect to tandem routed local calling.

Issue 7 also addresses the routing of calls over direct facilities if such facilities exist and Western Wireless demands that Great Plains route calls to it as a local call when direct facilities exist. The record in the case shows that Great Plains agreed to route calls to Western Wireless as a local call when Western Wireless implements a direct trunk group. Therefore, the only disagreement between the parties is related to call delivery when a direct facility does not exist. Western Wireless argued that since it routes traffic to the tandem without an IXC carrying the call, Great Plains must route traffic in the same manner. Any argument that Great Plains must ignore its equal access requirements and mirror the wireless carrier's traffic routing ignores the different dialing parity and equal access obligations imposed on wireless and wireline carriers by the FCC. The Arbitrator's ruling that the FCC intended for all calls within the MTA to be local is absurd and baseless. The FCC has never redefined local and toll calls nor excluded calls from ILECs to CMRS providers from intraLATA dialing parity and equal access obligations. We urge the Commission to overturn the Arbitrator's decision of Issues 7 and 8.

Issue 3 relates to the appropriate reciprocal compensation rate. Western Wireless' proposed rate was chosen in large part due to the Arbitrator's ruling that the entire cost of Great Plains' central office switch is non-traffic sensitive. The Arbitrator cited a case decided by the Illinois Commerce Commission that held that since Ameritech ordered switches to support a discreet number of lines, it was proper to assign the cost of the switch to the loop. The Arbitrator's finding that the Great Plains FLEC Model contemplates ordering switches under such conditions completely ignores the evidence and testimony on this matter. A Great Plains witness testified that its vendor ordering information relies on busy-hour estimates for all users of the switch and that the processor and matrix costs are based on estimates that are traffic sensitive. The result of the Arbitrator's ruling will be to pass on the traffic sensitive costs to the end-user as a flat monthly charge added to the end-users' local monthly rate, regardless of the amount of end-user usage. This result sets a truly undesirable policy for this State.

Issue 1 asked "what should the definition of Great Plains' Local Service Area be for the purposes of the parties interconnection agreement?" The Arbitrator's ruling that the scope of an ILECs' local service area is to be defined as co-extensive with the MTA is without merit. The Arbitrator based his decision on paragraph 1036 of the FCC's *First Report and Order on Local Competition*[1] to the exclusion of all other findings in the *First Report and Order on Local Competition* and subsequent FCC Orders. Although in paragraph 1036 the FCC defined the MTA as a local service area for purposes of reciprocal compensation, the FCC specifically excluded such traffic from reciprocal

[1] *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, CC Docket No. 96-98 and *Interconnection Between Local Exchange Carriers and Commercial Mobile Radio Service Providers*, CC Docket No. 95-185, First Report and Order, FCC 96-325, Released August 8, 1996.

compensation if carried by an IXC in paragraph 1043 of the *First Report and Order on Local Competition*.

Issue 2 dealt with a determination of traffic subject to reciprocal compensation. The Arbitrator either completely ignored the definitions of "telephone exchange service" and "telephone toll service" as found in the Act, or erroneously concluded he had the authority to rewrite these definitions. (See 47 U.S.C. § 153 (47) and § 153 (48)). Thus, the Arbitrator ignored the fact that ILECs must route telephone toll calls to IXCs. Calls routed to an IXC are subject to access charges. Thus, the Arbitrator ignored Section 251(g) of the Act which retained the access charge regime and the *ISP Order*[2] in which the FCC found that calls subject to access charges are not subject to reciprocal compensation.

Since the Arbitrator does not have the authority to rewrite the definitions found in the Act, and does not have the authority to rewrite Section 251(g) of the Act, the Commission must overturn the Arbitrator's decision on Issue 1 and Issue 2.

Based on the foregoing, it is the Companies' position that the Arbitrator made significant and egregious errors in his decision. If allowed to stand, the result of these errors will be to force ILECs to route calls in a different manner than occurs with the current network configuration in this State. Based upon this flawed decision, ILECs will no longer route traffic in accordance with their equal access requirements or collect access charges on the traffic in question. The decision will also force ILECs to incur the substantial cost of provisioning new Feature Group C trunking arrangements in parallel to

[2] *Implementation of the Local Competition Provisions in Telecommunications Act of 1996*, CC Docket No. 96-98 and *Intercarrier Compensation for ISP-Bound Traffic*, CC Docket No. 99-68, Order on Remand and Report and Order, released April 27, 2001, ("*ISP Order*"), remanded in WorldCom v. FCC, et al., No. 01-1218 (D.C. Cir.)(May 3, 2002).

the existing Feature Group D network. This cost would be required to be recovered from end-users as a flat rate monthly charge, regardless of use of such facilities. Additionally, the cost of the usage-sensitive switching component will also need to be added to the end-user bill.

In conclusion, it is clear that the arbitrator made several errors in this proceeding and overstepped his authority on many key issues. The Arbitrator cannot disregard the definitions of telephone exchange service and telephone toll service as defined in the Act. The Arbitrator cannot disregard an ILEC's equal access and intraLATA dialing parity requirements by redefining toll and local calls. The Arbitrator cannot disregard that toll calls that are required to be routed to IXCs are subject to the requirements of 251(g) of the Act (access), not reciprocal compensation. The Arbitrator cannot ignore FCC FLEC study rules by disregarding the traffic sensitive nature of the switching component. Finally, the Arbitrator cannot mandate 1+ 10 digit dialing to be routed around an IXC if it is not technically feasible to do so.

Based upon the aforementioned errors and in order to avoid a grave injustice to Great Plains, the rural ILECs in Nebraska, and most importantly the consumers of telecommunications services in this State, the Companies respectfully request that the Commission overturn the Arbitrator's decision of Issues 1, 2, 3, 7, and 8 and enter an order to effect that result.

Again, the Companies appreciate the opportunity to provide our comments regarding Application No. C-2872.

Dated: August 1, 2003

Respectfully Submitted,

"THE RURAL INDEPENDENT COMPANIES"
Clarks Telecommunications Co.,
Consolidated Telephone Company,
Consolidated Telco Inc.,
Hartington Telecommunications Co., Inc.,
Hershey Cooperative Telephone Company,
K&M Telephone Company, Inc.,
Nebcom, Inc.,
Nebraska Central Telephone Company,
Northeast Nebraska Telephone Company,
Stanton Telephone Co., Inc., and
Three River Telco

CERTIFICATE OF SERVICE

On this 1st day of August, 2003, true and correct copies of the foregoing Comments were transmitted by U.S. Mail delivery to Philip R. Schenkenberg, 2200 First National Bank Building, St. Paul, Minnesota 55101, legal counsel for WWC License L.L.C.; to Chris Post, NPSC Staff Attorney, 300 The Atrium, 1200 N Street, Lincoln, Nebraska 68508; and to Paul M. Schudel, 301 South 13th Street, Suite 500, Lincoln, Nebraska 68508, legal counsel for Great Plains Communications, Inc.

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Charles Fast